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IN THE

Supreme Court of the United States

October Term, 1969

No. 549

WILLIAM K. BUSCAGLIA, Director, Division of Sales Tax, County of Erie, and NEW YORK STATE TAX COMMISSION,

Petitioners,

against

LIBERTY NATIONAL BANK AND TRUST COMPANY,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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Jurisdiction

The petition asserts simply that the jurisdiction of this Court rests on 28 U. S. C. § 1257(3).

The respondent respectfully submits that this Court lacks jurisdiction to grant the petition for the following reasons:

1. The "judgment of the Court of Appeals entered in that Court on the 4th day of June, 1969, which denied reargument and amendment of the remittitur in the captioned case" (Petition, p. 1) was not a final judgment of the state court but merely an order denying reargument and

as such not subject to review by this Court; the time to appeal from the final judgment which was entered on February 19, 1969 has long since expired.

2. The claim of unconstitutionality now relied upon by the petitioners was never advanced in the original submission of the case to the state courts, nor in the first appeal to the Court of Appeals. As will be shown, under New York practice a constitutional question cannot be first raised in the Court of Appeals and certainly not upon reargument. The decision in that Court was based on statutory interpretation "upon the constraint" of decisions of this Court. There is thus no decision on constitutional grounds to be reviewed on certiorari.

Question Presented

The sole issue presented by this protracted litigation is whether respondent, a national banking association, is immune as a purchaser from state and local sales and use taxes imposed by the petitioners herein. This question has been definitively answered by this Court in two recent decisions, one as recently as the last term. (See *Dickinson v. First National Bank of Homestead*, 393 U. S. 409 [1969]; *First Agricultural National Bank of Berkshire County v. State Tax Commission*, 392 U. S. 339 [1968].) The Court of Appeals of the State of New York unanimously determined this question favorably to the respondent herein stating specifically in its remittitur that it did so "upon the constraint" of the foregoing decisions of this Court. (See Petition, pp. 59-61.)

History of the Litigation

For the convenience of the Court we summarize the history of this litigation.

The litigation was submitted to the Appellate Division of the Supreme Court of the State of New York, Fourth Department, upon an agreed statement of facts. The form of the submission is important since New York practice confines the decision in such a case to the issues raised therein. (CPLR 3222(b)(2).) We have therefore annexed to this brief as Appendix A a copy of the submission. The Appellate Division decided the controversy unanimously in favor of respondent finding that Congress had not authorized the imposition of the sales and use taxes in question upon a national bank. (Petition, pp. 22-27, 48-50.)

Upon appeal, the Court of Appeals of the State of New York reversed and granted judgment for the petitioners herein, holding that the petitioners were not barred by 12 U. S. C. § 548 from imposing such taxes, based upon an analysis of the congressional intent embodied in that legislation. (Petition, pp. 27-43, 51-53.)

Thereafter, respondent appealed to this Court. While the appeal was pending, this Court handed down its decision in *First Agricultural National Bank of Berkshire County v. State Tax Commission*, *supra*, based solely upon an interpretation of 12 U. S. C. § 548, which authoritatively established the exemption of national banks from this type of state and local taxation. The respondent then promptly moved for reargument in the Court of Appeals and this was granted. (Petition, p. 58.) Thereupon, respondent moved to dismiss its own appeal to this Court pursuant to Rule 60. (Petition, p. 56.) In opposing reargument, petitioners for the first time in the state courts advanced the extraordinary claim that the interpretation of section 548 by this Court was violative of the Tenth Amendment to the United States Constitution.

On February 19, 1969 the Court of Appeals, upon reargument, reversed its earlier decision and upheld the position of the respondent. (Petition, pp. 59-61.) This was, and is now, the final judgment of the Court of Appeals, and the present petition is not addressed to it.

Thereafter, the petitioners moved the Court of Appeals for a second reargument and for an amendment of the remittitur to show that constitutional questions were necessarily passed upon. On June 4, 1969 the Court of Appeals denied both motions of the petitioners (Petition, pp. 68-69) and the present petition was filed in this Court on September 2, 1969.

Statutes Involved

The New York State and Erie County tax statutes involved and 12 U. S. C. § 548 are correctly set forth in Appendix C of the petition. Rule 3222 of the New York Civil Practice Law and Rules, pursuant to which this controversy was submitted to the state courts, is set forth in Appendix B hereto.

Summary of Argument

1. A writ of certiorari should not be granted because the Court of Appeals decided the only federal question of substance in accordance with, and "upon the constraint of", this Court's most recent decisions on the precise point.

2. The supposed constitutional grounds for granting the petition are devoid of merit.

3. The Court lacks jurisdiction to grant this petition.

ARGUMENT

1. The Decision of the Court of Appeals.

This case is governed by the decisions of this Court in the *First Agricultural National Bank* and *Dickinson* cases cited above. We do not believe that any restatement of the facts or excerpts from the decisions in these cases are required at this point. The two earlier cases and the present case are identical. In each case the same question was involved, *viz.* the liability of national banks for state and local sales and use taxes. This Court has now twice decided that an exemption for such banks exists by reason of the provisions of section 548 of Title 12 of the United States Code, and the New York Court of Appeals has accepted these decisions as final. No amount of argument can alter this inescapable fact.

Basically what petitioners seek is a total re-examination of this Court's decision in the *First Agricultural National Bank* case. Indeed, this is asserted quite plainly in the petition. (See pp. 8-14.) In view of the fact that counsel for the petitioners participated in that appeal, having filed a 75 page brief *amicus curiae* on behalf of the State of New York, their position on the question involved in this proceeding has already been extensively presented to this Court.

It should be added that in their earlier brief *amicus curiae*, petitioners advanced essentially the same contention now reiterated in the present petition—that by reason of a claimed change in their banking functions the immunity of national banks has been lost. This analysis was, of course, rejected by this Court which stated:

> "Because of pertinent congressional legislation in the banking field, we find it unnecessary to reach the con-

> stitutional question of whether today national banks should be considered nontaxable as federal instrumentalities."
>
> (392 U. S. at 341)

Petitioners fail to distinguish between the type of inquiry which must be undertaken when immunity is asserted in the absence of congressional legislation and the significantly different analysis which must prevail when Congress has enacted controlling legislation. When the claim of immunity is grounded solely upon constitutional implication, the functions performed by the party claiming immunity must be analyzed to determine whether they are in fact governmental in nature. This was the type of inquiry which was necessary in the cases cited by petitioners. (See, *e.g., Hamm v. Boeing Co.*, 394 U. S. 320 [1969]; *Makah Indian Tribe v. Tax Commission*, 393 U. S. 8 [1968]; *Department of Employment v. United States*, 385 U. S. 355 [1966]; and the cases cited in the petition at pp. 19-20.) In contrast, when, as in the present case, Congress has acted and no claim is made that Congress lacks the power to establish a system of national banks, the type of analysis urged by petitioners is entirely inapplicable. (See, *e.g.*, the *First Agricultural National Bank* case.) If the enabling legislation is constitutional and if the instrumentality's activity is within the scope of that legislation, the power of Congress to confer immunity necessarily follows. (*Federal Land Bank v. Board of County Commissioners*, 368 U. S. 146, 151 [1961]; *Smith v. Kansas City Title & Trust Co.*, 255 U. S. 180, 211-212 [1921].) *Pittman v. Home Owners' Loan Corp.*, 308 U. S. 21 at 32-33 (1939), states this principle with clarity:

> "Petitioner insists that the tax is not discriminatory; that it does not impose a burden upon the Home Owners' Loan Corporation; and that if the Act of

Congress be construed as conferring an immunity, it went beyond the power of Congress, as Congress cannot 'grant an immunity of greater extent than the constitutional immunity'.

We assume here, as we assumed in Graves v. New York, 306 US 466, 83 L ed 927, 59 S Ct 595, 120 ALR 1466, that the creation of the Home Owner's Loan Corporation was a constitutional exercise of the congressional power and that the activities of the Corporation through which the national government lawfully acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments. M'Culloch v. Maryland, 4 Wheat. 316, 421, 422, 4 L ed 579, 605; Smith v. Kansas City Title & T. Co., 255 US 180, 208, 209, 65 L ed 577, 588, 589, 41 S Ct 243; Graves v. New York, supra. Congress has not only the power to create a corporation to facilitate the performance of governmental functions, but has the power to protect the operations thus validly authorized. 'A power to create implies a power to preserve.' M'Culloch v. Maryland, supra (4 Wheat, p. 426, 4 L ed 606). This power to preserve necessarily comes within the range of the express power conferred upon Congress to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States. Const. Art. 1, § 8, ¶ 18. In the exercise of this power to protect the lawful activities of its agencies, Congress has the dominant authority which necessarily inheres in its action within the national field. Shreveport Case (Houston, E. & W. T. R. Co. v. United States) 234 US 342, 351, 352, 58 L ed 1341, 1348, 1349, 34 S Ct 833."

2. The Tenth Amendment Question.

The contention of the petitioners, that the power of Congress to enact controlling legislation with respect to national banks is limited by reason of the Tenth Amendment, is clearly erroneous. Indeed, in rejecting this very

constitutional argument in the past, the Court characterized it as "singularly without merit." (See *Sperry v. Florida,* 373 U. S. 379 at 403 [1963].) In doing so, the Court relied upon the remarks of James Madison as reported in II Annals of Congress 1897:

> " 'Interference with the power of the States was no constitutional criterion of the power of Congress. If the power was not given, Congress could not exercise it; if given, they might exercise it, although it should interfere with the laws, or even the Constitution of the states.' "
> (*Ibid.*)

It is settled law that congressional action which is otherwise constitutionally valid is not rendered invalid by virtue of a challenge grounded solely upon the Tenth Amendment. We note that petitioners have cited no authority controverting this basic principle.

Indeed, the constitutional argument now advanced by petitioners was specifically rejected by this Court upon a previous constitutional challenge involving the power of Congress to enact controlling legislation in this regard. (See *Maricopa County v. Valley Nat. Bank,* 318 U. S. 357 [1943].) It must be noted that this case was decided well after the date upon which petitioners claim that Congress lost the power to regulate the extent to which national banks may be subjected to state taxation. In disposing of this argument, the Court stated:

> "Little need be said in answer to the argument that the Act violates the Tenth Amendment. The authority by which the taxes in question were levied did not stem from the powers 'reserved to the States' under the Tenth Amendment. It was conferred by Congress which has under the Constitution exclusive authority to determine whether and to what extent its instrumentalities, such as the Reconstruction Finance Cor-

> poration, shall be immune from state taxation. . . . Hence when Congress withdrew the privilege which it had previously granted, it was not curtailing any political power which the Constitution had reserved to Arizona." (Citations omitted.)
>
> (318 U. S. at 361)

Petitioners' assertion, that in its recent review and analysis of 12 U. S. C. § 548 in the *First Agricultural National Bank* case this Court failed to consider the elementary question of whether or not Congress even possesses the constitutional authority to enact that legislation, is extraordinary indeed in the light of both the prevailing and dissenting opinions of this Court. The majority opinion noted the extensive activity of Congress in the banking field and, in fact, found it unnecessary to look beyond the pertinent congressional legislation on this point (392 U. S. at 340-346). The majority concluded with the following confirmation of Congress' obvious authority in this respect:

> "we are convinced that if a change is to be made in state taxation of national banks, it must come from the Congress, which has established the present limits." (392 U. S. at 346)

On this point, the dissenters also concurred:

> "so far as construing § 548 is concerned, in practical effect the issue is who shall bear the burden of seeking congressional action."
>
> (392 U. S. at 363)

We think it highly unlikely that this entire Court, when presented with what is essentially the same argument—*i.e.* that the functions of national banks have so changed that they no longer are entitled to immunity from state taxation—could have overlooked such an obvious constitutional impediment, if it existed, in unanimously upholding

the power of Congress to enact controlling legislation on this very subject.

Moreover, this is not the first time that counsel for the petitioners has urged this very argument before this Court. We were informed, in petitioners' motion papers in connection with their motion for reargument before the Court of Appeals, that an *amicus* brief had been filed in the case of *Sullivan v. United States*, 395 U. S. 169 [1969]:

> "At the request of the State of Connecticut the State of New York filed prior to oral argument an *amicus curiae* brief in support of Connecticut's power to impose these taxes in which this State argued, among others, that the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (Title 50 App. U. S. C. A. § 574), which grants limited tax immunity in other areas was in no way a limitation upon the sovereign taxing powers of the States reserved by the Tenth Amendment to the Federal Constitution, since this would be unconstitutional thereunder and that non-resident military personnel had no immunity from retail purchases made in their private capacity, an argument under the Tenth Amendment which we have heretofore advised this Court was never raised nor passed upon in either the *First Agricultural National Bank* or in the *Dickinson cases, supra.*"
>
> (Notice of Motion and Affidavit on behalf of petitioners herein at pp. 5-6.)

Again, this Court grounded its unanimous decision on an interpretation of the congressional legislation claimed by counsel to be an unconstitutional exercise of congressional power.

3. The Jurisdictional Question.

The petition requests this Court "to review the judgment of the Court of Appeals entered in that Court on the 4th day of June, 1969, which denied reargument and amend-

ment of the remittitur in the captioned case." (Petition, p. 1; see also p. 2.) The order of the Court of Appeals is reproduced at pages 68 and 69 of the petition. It is obviously nothing more than an order of that Court disposing of a motion. It does not purport to be a final determination of the merits of the controversy. Indeed, that order was entered long after judgments had been entered in the lower Courts upon the remittitur of the Court of Apeals. (See Petition, pp. 62-69.)

This Court has no jurisdiction to review the order which the petition seeks to have reviewed. (*Brockett v. Brockett*, 2 How. 238 [1844]. See also *Pfister v. Northern Illinois Finance, Co.*, 317 U. S. 144, 149-150 [1942]; *Wayne Gas Co. v. Owens Co.*, 300 U. S. 131, 137 [1932]; *Convoy v. First National Bank*, 203 U. S. 141, 145 [1906]; *Wyle v. Coxe*, 14 How. 1 [1852]; 28 U. S. C. § 1257.) The petition does not request review of the final judgment of the Court of Appeals entered on February 19, 1969, and in any event the time for such an application has expired.

Even if the petition be construed as addressed to the final judgment, this Court cannot now adjudicate the new issues which they seek to interject. Contrary to the well-established principle that constitutional questions must be raised at the earliest appropriate opportunity, petitioners did not even allude to the questions which they now present until this controversy had already been heard and decided by both the Appellate Division and the Court of Appeals on the first argument; this despite the fact that respondent has steadfastly asserted throughout this proceeding that section 548 prohibits the imposition of the taxes in question. It was not until the case was heard *on reargument* in the Court of Appeals that these questions were presented by petitioners to that Court.

This belated attempt of the petitioners to raise these constitutional questions at so late a stage in this proceeding is directly contrary to New York practice. Such questions cannot be raised for the first time in the Court of Appeals but must be raised in the lower courts. (See *Nod-Away Co. v. Carroll,* 240 N. Y. 252, 148 N. E. 512 [1925]; *Matter of Andersen,* 178 N. Y. 416, 70 N. E. 921 [1904]. See also, *Schillawski v. State,* 9 N. Y. 2d 235, 213 N. Y. S. 2d 68, 173 N. E. 2d 93 [1961]; *Davis v. Board of Elections,* 5 N. Y. 2d 66, 179 N. Y. S. 2d 513, 153 N. E. 2d 879 [1958]; *Jongebloed v. Erie R. Co.,* 296 N. Y. 912, 72 N. E. 2d 627 [1947]; 11 Carmody Wait 2d *New York Practice* § 71:114, p. 126.) The failure of petitioners to raise these questions in a timely fashion under New York law deprives this Court of jurisdiction in this matter:

> "It is clear that this Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with the requirements of state law."
>
> (*Edelman v. California,* 344 U. S. 357 at 358 [1953])

Conclusion

The Petition for Certiorari Should Be Denied.

Dated: September 22, 1969.

Respectfully submitted,

MANLY FLEISCHMANN, ESQ.,
Attorney for Respondent,
720 Liberty Bank Building,
Buffalo, New York 14202.

WILLIAM D. SCHULZ, ESQ.,
of Counsel.

APPENDIX A

Submission of Controversy to the Supreme Court, Appellate Division, Fourth Judicial Department

AGREED STATEMENT OF FACTS

The undersigned hereby submit a controversy upon an agreed statement of facts to the Supreme Court, Appellate Division, Fourth Judicial Department, of the State of New York.

The within controversy is real and submission is made in good faith for the purpose of determining the rights of the parties.

The parties stipulate that this action arises out of a special proceeding under Article 78 of the Civil Practice Law and Rules instituted by the petitioner herein on October 13, 1965, the commencement of which was timely, to compel the respondent, William K. Buscaglia, to refund certain taxes erroneously, illegally or unconstitutionally collected; that upon the request and stipulation of the parties, it was ordered by Special Term of the Supreme Court, Erie County, on January 6, 1966, that the State Tax Commission be made a necessary party to this proceeding and that the proceeding be transferred for initial disposition to the Supreme Court, Appellate Division, Fourth Judicial Department, pursuant to Sections 7803 and 7804 of the Civil Practice Law and Rules; that the submission of this controversy to the Supreme Court, Appellate Division, Fourth Judicial Department, is a part of and a continuation of this Article 78 proceeding; that this agreed statement of facts supercedes and takes the place of the pleadings in this proceeding.

The parties further stipulate that the papers herein shall be filed in the Office of the Clerk of Erie County and that the submission shall be heard and determined in the first instance by the Supreme Court, Appellate Division, Fourth Judicial Department.

The following is a statement of facts upon which this controversy depends:

1. The petitioner, Liberty National Bank and Trust Company, is a national banking association with its principal office in the City of Buffalo, County of Erie and State of New York.

2. The respondent, William K. Buseaglia, is the Director of the Division of Sales Tax, County of Erie, State of New York, and as such is charged with the duty of collecting the Erie County retail sales and compensating use taxes and of ordering the refund of such taxes in the event they are erroneously, illegally or unconstitutionally collected.

3. The respondent, New York State Tax Commission, is charged with the duty of administering and collecting the sales and compensating use tax as imposed by Chapter 93 of the Laws of 1965, effective August 1, 1965, and with the duty of administering and collecting the Erie County retail sales and compensating use taxes levied subsequent to August 1, 1965.

4. On April 19, 1963, Liberty National Bank and Trust Company was converted from a domestic banking corporation to a national banking association organized and conducting banking business pursuant to a certificate of authority issued by the Comptroller of the Currency in accordance with Title 12 of the United States Code. A copy of this certificate of authority is designated Exhibit A.

5. On May 27, 1947, the Board of Supervisors of the County of Erie imposed a retail sales tax and a compensating use tax of 1% in a resolution which provided in part as follows:

"Section 2. Imposition of tax.

(a) Commencing July 1, 1947, there shall be paid a tax of one per cent upon the amount of the receipts from every retail sale or sale at retail in this county of tangible personal property

. . . .

* * *

(c) Upon each taxable sale the tax to be collected shall be stated and charged separately from the sale price and shown separately on any record thereof, at the time when the sale is made or evidence of sale issued or employed by the vendor and shall be paid by the purchaser to the vendor as trustee for and on account of the county, and the vendor shall be liable for the collection thereof and for the tax.

(d) Where the purchaser has failed to pay and a vendor has failed to collect a tax upon a sale, as imposed by this resolution, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the purchaser directly to the Director and it shall be the duty of the purchaser to file a return thereof with the Director and to pay the tax imposed thereon to the Director within fifteen days after such sale was made.

* * *

Section 3. Collection of tax from purchaser. The Director shall by regulation prescribe a method or methods or a schedule or schedules of the amounts to be collected from purchasers in respect to any receipt upon which a tax is imposed by this resolution. . . ."

The resolution imposing a compensating use tax provides in part as follows:

"Section 2. Imposition of tax. Commencing July 1, 1947, there is hereby imposed and there shall be paid

by every person a tax on the use within the county of any tangible personal property purchased at retail."

6. The enabling act authorizing the Board of Supervisors to impose a sales tax (Chapter 278 of the Laws of 1947) provides in part as follows:

"§ 5. Transactions by or with the following shall not be subject to any of the tax authorized by this act:

* * *

(b) The United States, insofar as it is immune from taxation;"

7. On June 2, 1964, the Board of Supervisors of the County of Erie increased the rate of these taxes to 3%, effective July 1, 1964.

8. Since becoming a national banking association on April 19, 1963, Liberty National Bank and Trust Company has paid to the Division of Sales Tax, County of Erie, sales and use taxes on purchases for its own use of tangible personal property in the following amounts:

(a) April 19, 1963, thru December 31, 1964, as shown by the Schedules designated Exhibit B.	$19,465.00
(b) January 1, 1965, thru June 30, 1965, as shown by copies of tax returns filed which are designated Exhibits C and D.	10,879.86
(c) October 26, 1965, deficiency payment including $97.48 in interest, as shown by a notice of deficiency and correspondence which are designated Exhibits D1, D2 and D3.	1,056.56
TOTAL	$31,401.42

9. On April 8, 1965, Liberty National Bank and Trust Company made written application to the Director, Division of Sales Tax, County of Erie, for a refund of all retail sales and compensating use taxes paid upon its purchases of tangible personal property since April 19, 1963. A copy of this application is designated Exhibit E.

10. On August 9, 1965, as the result of a hearing in which Exhibits A, B, C and D were submitted in support of the application, the Director, Division of Sales Tax, County of Erie, denied in writing this application for a refund. A copy of this determination is designated Exhibit F.

11. On October 13, 1965, Liberty National Bank and Trust Company instituted this proceeding under Article 78 of the Civil Practice Law and Rules to compel the Director, Division of Sales Tax, County of Erie, to order a refund of the sales and use taxes paid by it as a purchaser since April 19, 1963.

12. Liberty National Bank and Trust Company has filed with the Director, Division of Sales Tax, County of Erie, an undertaking as required by Section 10(b) of the resolution of the Board of Supervisors of Erie County adopted June 2, 1964, in the amount of $1,000.00 as fixed by an order of the Hon. Reid S. Moule, Justice of the Supreme Court, dated October 8, 1965. A copy of the above described undertaking is designated Exhibit G.

13. By Chapter 93 of the Laws of 1965, the State of New York adopted a sales and compensating use tax upon the receipts from the retail sale or use of tangible personal property and various services as provided for by said Chapter.

14. Since August 1, 1965, Liberty National Bank and Trust Company has paid no sales or compensating use taxes upon purchases by it of items covered by this statute.

15. The controversy hereby submitted for decision is whether or not Liberty National Bank and Trust Company is an instrumentality of the United States government and, therefore, as a purchaser, is immune from the above sales and use taxes imposed by the State of New York, and, if it is such an instrumentality, whether it is immune from the sales and use taxes imposed by the County of Erie.

16. Petitioner claims and demands that upon the foregoing facts it is entitled to judgment that as a national banking association it is an instrumentality of the United States government and immune, insofar as it is a purchaser, from the payment of the retail sales and compensating use taxes imposed by the County of Erie and the State of New York and a judgment compelling and directing the respondent, William K. Buscaglia, as Director, Division of Sales Tax, County of Erie, to forthwith order a refund to the petitioner of all retail sales taxes and compensating use taxes erroneously, illegally and unconstitutionally collected from it since April 19, 1963, together with interest thereon.

17. The parties hereto agree that the Court shall render such judgment as shall be proper upon the above facts together with the costs and disbursements of this proceeding.

Dated: February 8, 1966.

LIBERTY NATIONAL BANK AND
TRUST COMPANY,

By J. G. SCHMAUSS,
Senior Vice President and Cashier.

DIVISION OF SALES TAX,

By WILLIAM K. BUSCAGLIA,
Director.

NEW YORK STATE TAX COMMISSION,

By JOSEPH M. MURPHY,
By IRA J. PALESTIN,
By JAMES R. MACDUFF,
as and constituting the State Tax Commission
of the State of New York.

State of New York, }
County of Erie. } ss.:

On the 8th day of February, 1966, before me personally came J. G. SCHMAUSS, to me known to be the Senior Vice President and Cashier of LIBERTY NATIONAL BANK AND TRUST COMPANY, a national banking association, and one of the parties described in and which executed the foregoing submission, who being by me duly sworn did depose and say that he resides in the Village of Hamburg, N. Y., that he is the Senior Vice President and Cashier of the national banking association described in and which executed the foregoing submission; that he knows the seal of said association; that the seal affixed to such submission is such association seal; that it was so affixed by order of the Board of Directors of said association and that he signed his name thereto by like order.

WILLIAM D. SCHULZ,
Notary Public, State of New York,
Qualified in Erie County,
My Commission Expires March 30, 1967.

State of New York,
County of Erie, } ss.:

On this 8th day of February, 1966, before me personally came WILLIAM K. BUSCAGLIA, to me known and known to me to be one of the persons described in and who executed the foregoing submission, and he acknowledged to me that he executed the same.

JOHN S. RYAN,
Reg. No. 562,
Notary Public in the State of New York;
Residing in Erie Co. at time of Appointment,
My Commission Expires Mar. 30, 1968.

State of New York,
County of Albany. } ss.:

On this 1st day of March, 1966, before me personally came JOSEPH H. MURPHY to me known and known to me to be one of the persons described in and who executed the foregoing submission, and he acknowledged to me that he executed the same.

FLORENCE C. WINTER,
Notary Public, Albany County,
Commission Expires March 30, 1967.

State of New York,
County of Albany. } ss.:

On this 28 day of Feb., 1966, before me personally came IRA J. PALESTIN, to me known and known to me to be one of the persons described in and who executed the foregoing

submission, and he acknowledged to me that he executed the same.

FLORENCE C. WINTER,
Notary Public, Albany County,
Commission Expires March 30, 1967.

State of New York, }
County of Albany. } ss.:

On this 28 day of Feb., 1966, before me personally came JAMES R. MACDUFF, to me known and known to me to be one of the persons described in and who executed the foregoing submission, and he acknowledged to me that he executed the same.

FLORENCE C. WINTER,
Notary Public, Albany County,
Commission Expires March 30, 1967.

Exhibit A

Comptroller of the Currency
TREASURY DEPARTMENT OF THE UNITED STATES
Washington, D. C.

WHEREAS, satisfactory evidence has been presented to the Comptroller of the Currency that Liberty Bank and Trust Company, located in Buffalo, State of New York, has complied with all provisions of the statutes of the United States required to be complied with before being authorized to commence the business of banking as a National Banking Association;

Now, THEREFORE, I hereby certify that the above-named association is authorized to commence the business of banking as a National Banking Association under the title "Liberty National Bank and Trust Company", effective as of the close of business on April 19, 1963.

IN TESTIMONY WHEREOF, witness my signature and seal of office this 19th day of April, 1963.

JAMES J. SAXON,
Comptroller of the Currency,
Charter No. 15080.

CERTIFICATE

Comptroller of the Currency,
Treasury Department of the United States, } ss.:
Washington, D. C.

I hereby certify that the foregoing is a true and complete copy of the certificate recorded in this Office, dated April 19, 1963, of James J. Saxon, Comptroller of the Currency, approving the conversion of the bank mentioned therein.

IN WITNESS WHEREOF, I have on JUN 17 1963 hereunto set my hand and caused the seal of the Comptroller of the Currency to be affixed to these presents.

JAMES J. SAXON,
Comptroller of the Currency.

Certified Copy
of
Certificate of Conversion
of
LIBERTY BANK AND TRUST COMPANY
into a
National Banking Association
with the name
LIBERTY NATIONAL BANK AND TRUST COMPANY
as recorded in the office of the
Comptroller of the Currency

Dated: April 19, 1963

Exhibit B

SUMMARY

1963 E. C. S. T. PAID ON PURCHASES

Page 1	$ 356.80
Page 2	360.42
Page 3	1,227.77
Page 4	158.76
Page 5	1,316.63
Page 6	2,128.08
Page 7	397.62
Total	$5,946.08

E. C. S. T. PAID ON PURCHASES FROM APRIL 19, 1963 to DEC. 31, 1963

Vendor	*Amount*
Abco Inc.	.22
Ace Lock Service	.89
Howard R. Acker Co.	4.90
Adam, Meldrum & Anderson	.63
Addressograph-Multigraph	3.01
Advance Sanitation	.46
The Adverline Co.	11.21
Airkem of Erie Co. South	.12
Airkem Sales Corp.	.57
Alling & Cory Co.	11.55
American Allsafe Co.	1.13
Andorra Colonial Flower Shop	.89
Artcraft-Burow Color Printers	86.61
W. G. Arthur Co.	.28
Ashland Oil & Refining	2.06
Avenue Florist	1.15
Avenue Landscape Service	1.82
Ace Flag Co.	.57
Aluminum Fence Co.	.40
Phil Amigone Pontiac	.02
Andorra Colonial (see above)	.15
Anthony Brown Pharmacy	.07
Arkansas Auto Service	.63
Banconsumer Service	40.38
Chas. E. Bonzion	.58
Bison City Stationery	29.54
Brandt Auto Cashier	27.29
Bowen Road Garden Center	.24
Jerry Brookins Inc.	.85
Brown & Bigelow	.36
D. C. Brunner Co. Inc.	3.63
Buckeye Ribbon & Carbon Co.	7.53
Buffalo Athletic Club	2.19
Buffalo Blue Print Co.	2.13
Buffalo Builders Supply	.20
Buffalo Business Forms	.85
The Buffalo Club	.61
Buffalo Electric Co.	4.67
Buffalo Janitor Supply Co.	2.08
Buffalo News Co.	14.03

Vendor	*Amount*
Buffalo Sweeping Compound Co.	1.23
Burney's Garage	.12
Burroughs Corp. (Det)	.19
Burroughs Corp. (Rochester)	52.03
Broadway Knitting Mills	.39
Brownie's Army & Navy	1.37
Glenn Childs Photography	.15
Copies Inc.	31.93
Country Club of Buffalo	2.72
Country Squire Photography	.17
Total	$ 356.80
Cummins Chicago Corp.	.54
Curtis 1000 Inc.	4.06
Colegrove Photographers	.33
Commercial Blue Print Co.	.08
G. S. Dahmer	.05
Davis Refrigeration Co.	22.53
Ditto Inc.	7.04
Thomas Dixon & Sons	85.44
Chas. A. Drescher & Son Inc.	4.65
R. E. Dubois Hardware	.03
The Dwelle Kaiser Co.	5.78
Delmar Co.	3.72
Duk-It McDonald Products	.27
East Aurora Advertiser Inc.	.59
East Aurora Hardware Co.	.19
Ellicott Paint Co. Inc.	3.32
Emulso Corp.	1.63
Eaton Office Supply	.09
Eberlin Printing Co.	1.49
Elma Nurseries Inc.	.42
Fitzgerald Air Photos	5.41
Flexlume Sign Corp.	2.71
Flowers for Rememberances	.53
Franklin Cowan Paper Co.	52.05
Frontier Lumber Co.	.88
Frontier Office Supply Co. Inc.	.13
Dick Fischer Athletic Goods	.80
Frontier Microfilm Inc.	9.10
G. & G. Printing Co.	9.59

Vendor	*Amount*
Gates Circle Garage	.43
Joe Gates & Son	1.66
G. B. Stamp Co.	22.51
General Binding Corp.	.60
General Electric Supply Co.	.77
The Genesee Picture Frame Co.	.63
A. C. Gibson Co. Inc.	.33
J. H. Gintzler Press Inc.	1.80
Globe Welding Co.	.50
Gardenville Lumber	.16
Grand Island Motors	.09
Graphic Arts Supply Inc.	.13
E. J. Grupp Co.	14.66
Goergen-Mackwirth Co.	1.00
Gorski Liquor	.15
Griggs & Ball Co.	.16
N. J. Haberman	1.87
Edw. A. Habermehl Co. Inc	48.45
Hatt Electric Co.	1.67
Hare Photographs Inc.	3.16
Harlan-Patterson Inc.	.12
Hoelscher's Inc.	29.30
Hodge Inc.	.33
Hubbs & Howe Co.	.13
Hyatt's Graphic Supply	1.33
Hygrade Paper Co.	4.92
The Hoover Co.	.11
Total	$ 360.42

2(1963)

Interchemical Corp.	14.04
International Business Machine Corp.	998.13
Al Ives Ford Inc.	.01
Jordan Supply Co. Inc.	1.59
K & B Supply Co. Inc.	.09
Keelox Manufacturing Co.	.19
Fred H. Koehler Sons.	39.05
Frank A. Kraft	.20
Kreiss Sign Co. Inc.	4.69
Frank P. Kick Athletic Goods Inc.	.43
Wm. F. Kasting Co.	.17

Vendor	*Amount*
Kelly Printing Co.	1.45
Larwood Pharmacy Inc.	.12
Laux Sporting Goods Inc.	2.68
Robert A. Lehde	.40
Leonard's Sinclair Service	.20
Liberty Purchasing Dept. P/C	.40
Liberty Bank Building Associates	6.14
Lockwood Commercial Stationers	1.37
The Luedeke Studio	.43
Lockwood Stationers	.51
Manhardt Printing Inc.	1.01
William E. Mathias Inc.	2.34
Wm. C. Maunz Co. Inc.	12.08
McDonald Products Corp.	1.58
Marlos Floral Creations	.15
Frederic Marshall	.03
Maxwell Liquor Store	.31
D. J. Mead & Sons Inc.	1.68
Meatyard's Service Inc.	.04
The Miller Wiper Sales Corp.	5.80
C. Militello Floor Covering Inc.	.04
Barney Miller Inc.	.01
Mosler Safe Co.	1.63
Modern Business Forms	3.04
Moore Business Forms Inc.	51.87
Murphy Home Supply	1.08
The National Cash Register Co.	51.60
Richard F. Newell	.20
Hugh V. Nourse & Sons	1.47
National Flag & Emblem Co.	.40
N. Y. S. Electric & Gas	2.22
Office Machines & Equipment Co.	.03
OAK Laminated Plastics Co.	.19
Oubre Photographers	.04
H. I. Petrie	.01
Howard J. Pfeifer	.30
Philipps Bros. Hardware & Floor Covering	.30
Patton Electric Co.	.81
Perry Studio of Photography	.38
Phillips Bros. Garage Inc.	.16
Photo Tech Studios	.20
Pitney Bowes Inc.	3.38

Vendor	*Amount*
Pittsburgh Plate Glass Co.	.51
R. L. Polk & Co.	8.70
Polychrome Corp.	1.89
Total	$1,227.77

3(1963)

Quermback Electric Inc.	16.03
Reiber Roofing & Sheet Metal Works	.16
Remington Rand Systems	9.23
Fred W. Riemer Co.	.20
Roger Smith Drug Co.	.47
Royal McBee Corp.	21.19
Ryan & Williams Inc.	4.98
S. G. Press Inc.	6.11
Saber Soap Supply	.53
Safe, Lock & Key Corp.	1.87
Saville Farms Inc.	.10
Schaefer Plumbing Supply	.33
Schmitt's Garage Inc.	.88
Scripter's Appliance	.24
Schweikhard Studio	.19
Schuessler Hardware Inc.	.05
Sears, Roebuck & Co.	.16
Sherman's Liquor Store	3.10
Shields Bros.	.14
S. C. M. Corp.	.03
Smith's Hardware	3.52
Seneca Blue Print Co.	.32
Seneca Office Equipment	.20
L. B. Smith Motor Corp.	.20
Smith Metal Arts	.02
Spaulding Yates Inc.	2.06
Standard Duplicating Machine Agency	8.82
Sterling Glass Co.	.65
Stevens Auora Market	.12
Straco Inc.	.18
Summit Electric & Hardware	.43
H. D. Taylor Co.	5.16
Thermofax Sales Inc.	.38
Tontine Shops	.38
Transo Envelope Co.	31.20

Vendor	*Amount*
Tucker Quick Copy Center	2.28
Thompson's Greenhouse	.09
Thrift Lamp Co. Inc.	.16
Otto Ulbrich Co. Inc.	.87
Underwood Corp.	.15
United Office Machines Corp.	7.66
United Truck Owner's Service	.24
Universal Match Corp.	17.79
United Hamilton Products Inc.	1.03
United Office Machines	.20
United Projector & Film Corp.	.23
Varden Studios Inc.	.23
Vidler's	.30
Vulcan Flooring Co.	.09
Bradley Ward Co.	1.43
Warenoff's Inc.	.04
Weed & Company	.12
Weinheimer Plumbing Supply	.06
West Seneca Tool Rental	.10
Whitney Printing Corp.	5.61
David F. Williamson Co.	.10
Wilson's Flower Shop	.35
Total	$ 158.76

Winter Bros. Bank Supply	16.53
Winters Sign Co.	.85
Will Truck & Implement	1.15
F. W. Woolworth Co.	.05
X-Cel Food Market	.31
Yawman & Erbe Mfg. Co. Inc.	8.01
Young & Swartz Inc.	.61
Reserve Lithograph & Printing Co.	148.13
Barber & Drullard Inc.	183.02
Milton C. Johnson Co.	37.98
Brandt Auto Cashier Co.	34.72
Burroughs Adding Machine Corp.	48.28
Copies Inc.	3.56
Diebold Inc.	1.65
Flexlume Sign Corp.	9.81
General Binding	2.59

Vendor	*Amount*
Hoelscher's Inc.	67.36
Kreiss Sign Co.	407.85
Liberty National Bank	14.00
Mosler Safe Co.	5.55
National Cash Register	70.80
Overfield Typewriter Service	2.50
Remington Rand Inc.	19.11
Seneca Office Equipment	4.63
Sheehan Motor Sales	50.62
Tackbary's Furniture	3.28
Smith Corona Marchant	7.55
Thermofax Sales	7.28
United Office Machine	2.36
Winters Sign Co.	1.25
Ace Flag Co.	1.13
Barber & Drullard	38.73
Brandt Auto Cashier	15.66
D. C. Brunner	42.09
Buffalo Electric	3.09
Buffalo Janitor Supply	.35
Cummins Chicago Corp.	7.40
Ellicott Paint Co.	.40
Martin Dusel Hardware	.13
Flexlume Sign Corp.	19.23
Frontier Lumber	.03
G. E. Supply Co.	.08
Emil J. Grupp	.21
Hens & Kelly	.26
Hoelscher's Inc.	6.06
Hoddick & Taylor	.28
Kreiss Sign Co.	1.70
Quermback Electric	.09
Frederic Marschall	1.12
Mosler Safe Co.	3.47
Remington Rand Inc.	1.55
The Safe, Lock & Key Corp.	.07
Sears, Roebuck & Co.	1.95
Sterling Glass	.68
Summit Electric	.06
United Office Machines	8.85
Total	$1,316.63

Vendor	*Amount*
Wean Florist	.51
Weed & Co.	.15
Winters Sign Co.	2.75
Winters Sign Co.	2.86
Allen Carpet Cleaning	1.82
F. M. Sound Equipment	.25
Howland Costume Co.	.40
Puchalski Florist	.85
Stanford Display Studios	.26
Otto Ulbrich	.15
George Herman & Assoc.	418.22
Ace Flag Co.	1.13
Abbott Steel Co.	.23
Andorra Colonial Flowers	1.75
Barber & Drullard	22.53
Brandt Automatic Cashier	23.49
D. C. Brunner Co.	43.92
Buffalo Awning	2.48
Buffalo Electric	3.90
Buffalo Janitor Supply	.14
Buffalo News Co.	.30
Cummins Chicago Corp.	7.40
Dowd Chair Rental	.50
Dwelle Kaiser Co.	.03
Ellicott Paint Co.	.04
Flexlume Sign Corp.	16.34
Flowers for Remembrances	.45
G. B. Stamp Co.	.27
G. E. Supply Co.	.25
Genesee Picture Frame Co.	.02
Hens & Kelly	.26
Hex Manufacturing	3.08
Hoelscher's	21.14
Hubbs & Howe	.07
Kreiss Sign Co.	.24
Marlos Floral Creations	.60
Frederic Marschall	.90
Mosler Safe Co.	16.35
Petty Cash	.22
Remington Rand	.58
Sears, Roebuck & Co.	3.67
United Office Machine	6.69

Vendor	*Amount*
Weed & Company	.15
Winters Sign Co.	1.16
Division of Water	31.97
Iroquois Gas	50.40
New York Telephone	1,193.26
Niagara Mohawk	227.88
Fix Printing Co.	.79
Flowers by Dick Burton	.25
Granger & Co. Inc.	.10
The Letter Shop	.13
Miller-Mac Printing Co. Inc.	.29
The National Cash Register Co.	.04
Niagara Mohawk	7.31
Iroquois Gas	1.98
Soccio & Della Penna	3.85
Niagara Mohawk	1.33
Total	$2,128.08

6(1963)

SUMMARY

1964 E. C. S. T. PAID ON PURCHASES

Page 1	$ 742.23
Page 2	762.04
Page 3	1,427.72
Page 4	634.14
Page 5	463.46
Page 6	7,728.27
Page 7	1,811.08
Page 8	799.60
Total	$14,368.54

ERIE COUNTY SALES TAX PAID ON PURCHASES
YEAR 1964

Vendor	*Amount*
Ace Lock Service	4.56
Howard R. Acker Co.	2.18
Acme Visible Records Inc.	2.00
Addressograph-Multigraph	3.50
Adam, Meldrum & Anderson	3.60
Advance Sanitation Inc.	5.48
Adverline Co.	25.90
Airkem Sales Corp.	3.08
Air San	.12
Alling & Cory Co.	7.75
American Bag Corp.	3.22
Andorra Colonial Flower Shop	6.00
Artcraft Burow Color Printers	77.95
W. G. Arthur Co.	1.13
Ashland Oil Refining	6.12
Atlantic Refining Co.	5.13
Avenue Landscape Service	1.31
Ace Flag Co.	4.17
Airkem Sales Corp.	.09
American Allsafe Co.	1.06
American Photo Equip Co.	5.45
Anthony-Brown Pharmacy	.05
Avenue Florist	3.40
Avis Rent-A-Car	2.09
Banconsumer Service	62.52
Charles E. Benzino	.30
Baumler Collision Service	.62
P. F. Behringer	46.02
Bison City Stationers	73.23
Brandt Automatic Cashier	60.91
Harry W. Boorman Co.	.07
Bowen Road Garden Center	.06
Brite Jewelers	154.71
Jerry Bookins Inc.	1.38
Brooks Petroleum Products	.09
Brown & Bigelow	26.84
Buckeye Ribbon & Carbon Co.	29.99
Buffalo Blue Print Co.	1.25
Buffalo Builders Supply Co.	1.94

Vendor	*Amount*
Buffalo Business Forms	1.04
Buffalo Club	.69
Buffalo Electric Co.	15.28
Buffalo Janitor Supply Co.	3.88
Buffalo News Co.	1.91
Buffalo Sweeping Compound Co.	6.17
Burney's Garage	.08
Burroughs Corp. (Rochester)	63.40
Burroughs Corp. (Detroit)	13.02
Broadway Knitting Mills	.90
Anthony Brown Prescription	.59
Total	$ 742.23
D. C. Brunner Co. Inc.	6.55
Buffalo Athletic Club	2.68
Buffalo Flower Shop	.30
Buffalo Materials Handling Corp.	.57
Buffalo Photo Materials Co.	.83
Castiglia's Inc.	.02
C. B. L. Snyder Corp.	4.29
Chestnut Ridge Evergreen	1.74
City Typewriter Service	.09
Clasen Supply Inc.	.06
Closs Floral Shop	.60
Commerce Clearing House Inc.	4.60
Copies Inc.	64.14
Country Club of Buffalo	14.80
Curtis 1000 Inc.	128.06
Commercial Refrigeration & Equipment	3.68
Commercial Blue Print Co.	.04
Commercial Chemicals Inc.	.10
Commercial Refrigeration Service	.03
Conley Business Forms Inc.	.69
Connelly's Plumbing & Heating	.24
Mr. Copy	.45
Lawrence Coray	.40
Cordon Bleu	13.31
Milton O. Crockett Co.	.37
Cummins Chicago Corp.	.13
Davis Refrigeration Co.	2.52
Diebold Inc.	10.05

Vendor	*Amount*
Ditto Inc.	17.30
Thomas Dixon & Sons	173.80
Charles A. Drescher & Son	27.84
Dewald Florist	2.27
Delavan Auto Parts	.74
DeSpirt Mosaic & Marble Co.	.12
A. B. Dick Co.	1.29
Dubois Chemicals Inc.	3.88
R. E. Dubois Hardware	.02
East Aurora Advertiser Inc.	1.17
East Aurora Hardware Co.	1.11
Ellicott Paint Co. Inc.	.97
Emulso Corp.	3.76
East Aurora Lumber Co.	.18
Eastern Signs Inc.	.89
Eaton Office Supply	4.26
Ehrman's Plumbing & Heating	.03
Erb Co. Inc.	1.71
Ettore Winter Photo	.40
Fargo Equipment Co.	.36
Flexlume Sign Corp.	6.48
Franklin Cowan Paper Co.	179.36
Frontier Lumber Co.	14.50
Frontier Microfilm Inc.	53.94
Frontier Water & Steam Supply Co.	.58
Frank Full	1.34
Dick Fischer	1.95
Flower Mart	.45
Total	$ 762.04

2(1964)

Flowers for Remembrances	.45
Forbush Lumber	.12
Fox & Fox	.39
Fox Motors	.09
Frontier Oil	5.65
G. & G. Printing Co.	134.98
Galaxy Office Machine Service	.38
Gates Circle Garage	1.82
Joe Gates & Son	2.00
G. B. Stamp Co.	2.56

Vendor	*Amount*
General Electric Supply Co.	.12
Genesee Motoramp Garage	.02
Genesee Picture Frame Co.	.98
General Binding Corp.	.59
A. C. Gibson Co.	.41
J. H. Gintzler Press Inc.	6.16
Great Bear Spring Co.	6.90
Grever's Flower Shop	9.18
Griggs & Ball Co.	.11
E. J. Grupp Co.	41.79
G. W. Gossett Sales Co.	.29
Granger & Co.	.23
Graphic Arts Supply	.15
Grossman Display Center	.26
N. J. Haberman	11.18
Edw. A. Habermehl Co.	173.72
Hans Lumber & Millwork	1.13
William S. Hein & Co.	.50
Henning Motors Inc.	2.51
Hess Bros. Florists	1.87
Robert J. Herman	.02
Joan Hillers & Co.	.78
Hodge Florists	5.63
Hoelscher's Inc.	193.33
Hyatt's Graphic Supply	7.17
Hygrade Paper Co.	2.31
Howland Costume Co.	2.40
Hubbs & Howe Co.	.82
H. R. Hunt Motor Co.	.59
International Business Machines Corp.	685.93
Interchemical Corp.	46.71
Jordan Supply Co.	2.96
Johengen Hardware Co.	.21
L. L. Johnson Dump Trucks	.89
Johnson Service Co.	.21
Kaufman Photographers	2.98
K & B Supply Co.	.39
Fred H. Koehler Sons Inc.	52.78
Kreiss Sign Co.	10.66
Kuehner Leather Goods	.93
KeeLox Manufacturing	.99
Kelsey's Jewelry Store	.14

Vendor	*Amount*
Frank P. Kick	1.48
King Photographers	.51
Kraemer's Studio Photographers	.10
Larwood Pharmacy	.26
Total	$1,427.72

3(1964)

Laux Sporting Goods	2.34
Leonard's Sinclair Service	.61
Lanich-Schreiner Co.	.16
George Larde's Garage	.11
LeFebure Corp.	.70
Liberty Bank Building Assoc.	20.57
Luedeke Studio	20.67
Lockwood Commercial Stationers	36.48
William E. Mathias	7.03
William C. Maunz	21.67
McDonald Products	3.65
John Mack Lumber	.50
Manhattan Wiper Co.	3.02
Frederick Marschall Photographers	.14
Tony Martin	.39
Frank R. May Inc.	3.04
D. J. Mead & Sons	2.23
Barney Miller Inc.	5.51
Millington Lockwood Corp.	.58
Meyer Equipment Co.	.07
Miller-Mac Printing	.15
Miller Wiper Sales Corp.	7.01
Modern Auto Supply	.02
Modern Business Forms	31.83
Monroe Calculating Machine Co.	.07
Moody's Investor Service	22.83
Moore Business Forms	256.74
Mosler Safe Co.	4.10
Murphy Home Supply	.15
National Cash Register Co. (Erie)	.03
National Cash Register Co. (Buffalo)	45.38
Richard F. Newell	.24
Hugh V. Nourse & Sons	2.22
Norberg's Wallpaper & Paint	.20

Vendor	*Amount*
Office Automation Inc.	2.58
Office Machine & Equipment Co.	.09
Polychrome Corp.	13.34
Olivetti Underwood Corp.	.45
Oubru Photographers	.53
Park Add-N-Type Service	.11
Park Florist Inc.	.76
Parker's Pharmacy Inc.	4.83
Pete's Service Station	.10
Howard J. Pfeifer Florist	.80
Phillips Bros. Hardware	.46
Photo Tech Studios	.51
Pitney Bowes Inc.	13.97
Pittsburgh Plate Glass	5.23
Pleger & Stevenson Inc.	7.61
R. L. Polk & Co.	26.70
Prentice Hall Inc.	5.99
J. F. Pickard Inc.	.16
W. H. Prentice Inc.	2.57
Printcraft Marking Devices	3.21
Puchalski Florist	.45
Quermback Electric	43.25
Total	$ 634.14

4(1964)

Quick Copy Center	1.39
Quality Lumber	.14
Queen City Rubber Co.	.12
Remington Rand	7.65
Reynolds & Reynolds Co.	.31
Roger Smith Drug Co.	1.27
John C. Roth Inc.	.68
Royal-McBee Corp.	23.70
Ryan & Williams Inc.	57.98
Smith's Hardware	3.14
Joseph T. Ryerson & Son	2.47
Saber Soap Supply Co.	.84
Safe, Lock & Key Corp.	6.20
Schaefer Plumbing Supply Co.	1.10
Scripter's Appliance	2.14

Vendor	*Amount*
Sasala Florist	.36
Saville's	.18
George E. Schunk	.88
Schweikhard Studio	.05
Sears, Roebuck & Co.	2.44
Seneca Office Equipment Co.	16.76
Service Office Supply Corp.	23.87
S. G. Press Inc.	25.33
Sheehan Motor Sales	2.32
Shields Bros.	.19
Smith Corona Marchant	.09
Smith's Hardware	15.67
Seneca Blue Print Co.	.05
Sherman's Liquor Shop	1.82
Sherwin Williams	.18
Simplex Time Recorder Co.	.24
Smith Metal Arts Co. Inc.	.02
Spaulding Yates Inc.	3.04
Standard Duplicating Machine	2.56
Sterling Glass Co.	13.45
South Park Electric	.02
Standard Duplicating Machines	.02
Standard Display Studios	1.25
Sterling Photographers	.45
Straco Inc.	.77
Summit Electric & Hardware	.65
Stoll's Appliance & Repairs	.75
Store Fixture Sales Co.	.12
Sullivan McKeegan Co.	1.95
H. D. Taylor Co.	8.35
Thermofax Sales Inc.	4.26
Tontine Shops	2.41
Transco Envelope Co.	123.97
Tucker Quick Copy Center	.62
Tinney Cadillac	.20
Otto Ulbrich	.85
United Office Machines Co.	6.21
Universal Match Corp.	86.94
United Projector & Film Corp.	.14
Varden Studios Inc.	1.18
Village Printing House	3.72
Total	$ 463.46

Vendor	*Amount*
Wanakah Country Club	5.35
Warenoff's	.22
David F. Williamson Co.	.39
Winter Bros. Bank Supply	74.47
Winters Sign Co.	15.16
Will Truck & Implement Co.	.01
Wilson's Flower Shop	.25
Yawman & Erbe Mfg. Co.	.82
Young & Swartz	1.58
Xerox Corp.	19.10
Zahm's	.45
Frank Zodl	.42
C. D. Zimmerman	5.38
International Business Machines Corp.	3,330.68
Milton C. Johnson Co.	449.07
Barber & Drullard	457.42
Commercial Refrigeration Co.	83.70
Phototech	.15
Adam, Meldrum & Anderson Co.	5.40
Brandt Automatic Cashier	300.92
Brite Jewelers	3.37
D. C. Brunner	15.00
Buffalo Electric Co. Inc.	10.97
Burrough's Corp.-Todd Division	65.95
Empire Business Corp.	6.00
Flexlume Signs Corp.	37.61
E. J. Grupp Co.	1.49
Joan Hilliers & Co. Inc.	176.34
Hodge Florists Inc.	31.20
Hoelscher's Inc.	797.74
Hoover Company	9.71
Hyatt's Graphic Arts	6.94
International Business Machines Corp.	87.80
Lockwood-Millington	127.44
Mosler Safe Co.	494.76
National Cash Register Co.	43.13
National Flag & Emblem Co.	6.58
National Theatre Supply Co.	5.02
Office Machine & Equipment Co.	3.20
Office Automation Inc.	2.43
W. H. Prentice Inc.	627.18
Remington Rand	137.33

Vendor	*Amount*
Ryan & Williams Inc.	4.59
S. C. M. Corp.	24.01
Safe, Lock & Key Corp.	2.45
Seneca Office Equipment Co. Inc.	97.21
Service Office Supply	49.42
United Office Machine Corp.	67.66
Whitmeier & Ferris Co. Inc.	9.84
Winiewicz Hardware Co. Inc.	.83
James M. Hawkins	.41
Flexlume Sign Co.	17.92
Four Winds Nursery	.10
Buffalo Electric	1.25
Adverline Co.	3.40
Barber & Drullard	1.05
Total	$7,728.27

6(1964)

Bowen Road Garden Center	.26
D. C. Brunner	21.63
Buffalo Electric	2.74
Burroughs Adding Machine Co.	37.21
Eastern Signs Inc.	2.12
G. & G. Printing	7.42
General Electric Supply	.10
Emil J. Grupp	1.79
Kreiss Sign Co.	2.25
Luedeke Studio	2.70
Mosler Safe Company	15.24
Oubre Photographs	.93
Park Florist	.90
Safe, Lock & Key Corp.	.05
Sears, Roebuck	.80
Seneca Office Equipment	3.27
C. B. L. Snyder Corp.	.25
Winters Sign Co.	7.61
Seneca Office Equipment	21.83
Frontier Lumber	.22
D. C. Brunner	387.00
Brandt Automatic Cashier	125.28
Flexlume Sign Corp.	35.50
Seneca Office Equipment	14.49

Vendor	*Amount*
Howland Costume Co.	1.44
Barber & Drullard	1.41
Mosler Safe Co.	644.00
Winters Sign Co.	.55
Seneca Office Equipment	6.29
Flexlume Sign Corp.	114.80
Mosler Safe Co.	8.46
H. D. Taylor	3.24
Hoelscher's Inc.	3.57
South Side Furniture	18.45
Wean Florist	.48
Adverline Company	7.50
Barber & Drullard	1.18
Chestnut Ridge Evergreen Farm	4.41
Kreiss Sign Co.	.96
D. C. Brunner	229.02
D. C. Brunner	36.70
Anchor Concrete	7.65
B. C. S. Supply Co.	.23
Beals, McCarthy & Rogers	.83
Bethlehem Steel	4.13
Bray Brothers Inc.	2.73
CMC Chaffee	.30
Colonial Iron Works Inc.	8.61
Construction Equipment Co.	.41
Safe, Lock & Key Co.	.04
Neisner's	.01
Frontier Lumber Co.	1.12
Kenmore Builders Supply	.47
Mead Supply Corp.	.56
Rogers Welding Supply	.52
H. D. Taylor	.02
Buffalo Crushed Stone	9.40
Total	$1,811.08

Exhibit C

ORIGINAL

This Return must be filed with your remittance in full for the amount of the Tax within 20 days after the period covered by the Return, to avoid the imposition of penalties.

MAKE CHECK, DRAFT OR MONEY ORDER PAYABLE TO
DIRECTOR OF SALES TAX
907 City Hall
Buffalo, New York 14202

Form ST 5-22

THE COUNTY OF ERIE
DIVISION OF SALES TAX

Retail Sales and/or Compensating Use Tax Return

FOR PERIOD
JANUARY FEBRUARY MARCH
1965

or
Period From ..... 19.., To ..... 19..

Print Plainly Below.

Dist. Bus. Code
1 99

Registration No.
556004

LIBERTY NATIONAL BANK & TRUST CO.
BOX 889
BUFFALO N Y 14240

Please correct any error in above name, address and registration number.

BE SURE TO ANSWER ALL OF THE FOLLOWING QUESTIONS:

1. Did you file a Sales Tax Return for previous quarter? Yes x No ..
2. If so, give any address used on such return other than above .....
3. If no return for previous quarter was filed, state reason .....
4. State kind and class of business Banking.
5. State whether Corporation, Partnership, Individual Proprietorship, etc. Corporation.
6. Was business sold or discontinued? .....
   If so, give date .....

7. Has business name or address been changed during quarter? ..... If so, give,
   New Name .....
   New Address .....
8. If successor to a business, give previous owner's:
   Name .....
   Address .....
   Seller's Registration No. .....

COMPUTATION OF TAX

Item No.		
9.	Amount of Sales Tax Due on Sales by me/us	$ 986.70
10.	Amount of Sales Tax Due on Sales by others to me/us on which vendors did not collect Sales Tax from me/us This Item paid under protest	5,805.80
11.	Amount of Compensating Use Tax Due	
12.	Total Tax Due	$6,792.50
13.	Penalty and Interest	
14.	Total Tax, Penalty and Interest Due (Item 12 plus 13)	$6,792.50

(Explain on Reverse Side)

Receipt of Payment will be Recorded in this Space.
CASHIER'S STAMP

CERTIFICATE OF TAXPAYER

I certify that this return, including the accompanying schedules or statements, has been examined by me, and is,

to the best of my knowledge and belief, a true and complete return made in good faith for the period stated, pursuant to the Erie County Retail Sales and/or Compensating Use Tax Laws.

LIBERTY NATIONAL BANK AND TRUST COMPANY
Name of Business or Taxpayer

E. N. SANDEL
Agent or officer of corporation, trustee, etc.

Ass't Vice-President
Title

Date April 9, 1965

THIS RETURN MUST BE SIGNED — ENCLOSE REMITTANCE — AVOID PENALTY

Make Check, Draft or Money Order Payable to the Director of Sales Tax, 907 City Hall, Buffalo, New York 14202.

Exhibit D

ORIGINAL

This Return must be filed with your remittance in full for the amount of the Tax within 20 days after the period covered by the Return, to avoid the imposition of penalties.

MAKE CHECK, DRAFT OR MONEY ORDER PAYABLE TO
DIRECTOR OF SALES TAX
907 City Hall
Buffalo, New York 14202

Form ST 5-22

THE COUNTY OF ERIE
DIVISION OF SALES TAX

Retail Sales and/or Compensating Use Tax Return

FOR PERIOD
APRIL MAY JUNE
1965
or
Period From April 11 1965, To June 30, 1965

Print Plainly Below.

Dist. Bus. Code
1 999

Registration No.
556004

LIBERTY NATIONAL BANK & TRUST CO.
BOX 889
BUFFALO N Y 14240

Please correct any error in above name, address and registration number.

BE SURE TO ANSWER ALL OF THE FOLLOWING QUESTIONS:

1. Did you file a Sales Tax Return for previous quarter? Yes x No
2. If so, give any address used on such return other than above .....
3. If no return for previous quarter was filed, state reason .....
4. State kind and class of business Banking.
5. State whether Corporation, Partnership, Individual Proprietorship, etc. Corporation.
6. Was business sold or discontinued? .....
   If so, give date .....

7. Has business name or address been changed during quarter? ..... If so, give,
   New Name .....
   New Address .....
8. If successor to a business, give previous owner's:
   Name .....
   Address .....
   Seller's Registration No. .....

COMPUTATION OF TAX

Item No.		
9.	Amount of Sales Tax Due on Sales by me/us	$1039.95
10.	Amount of Sales Tax Due on Sales by others to me/us on which vendors did not collect Sales Tax from me/us This item paid under protest	5074.06
11.	Amount of Compensating Use Tax Due	
12.	Total Tax Due	$6,114.01
13.	Penalty ~~and Interest~~	
14.	Total Tax, Penalty and Interest Due (Item 12 plus 13) ..... (Explain on Reverse Side)	6,114.01

Receipt of Payment will be Recorded in this Space.

CASHIER'S STAMP

Pd by CC #170953

Voucher #783

CERTIFICATE OF TAXPAYER

I certify that this return, including the accompanying schedules or statements, has been examined by me, and is, to the best of my knowledge and belief, a true and complete return made in good faith for the period stated, pursuant to the Erie County Retail Sales and/or Compensating Use Tax Laws.

LIBERTY NATIONAL BANK AND TRUST COMPANY
Name of Business or Taxpayer

E. N. SANDEL
Agent or officer of corporation, trustee, etc.

Asst. Vice President
Title

Date July 15, 1965

THIS RETURN MUST BE SIGNED — ENCLOSE REMITTANCE — AVOID PENALTY

Make Check, Draft or Money Order Payable to the Director of Sales Tax, 907 City Hall, Buffalo, New York 14202.

Exhibit D-1

DIVISION OF SALES TAX
COUNTY OF ERIE
BUFFALO 2, NEW YORK

CC:
Joseph G. Schmauss,
Senior Vice President
Liberty National Bank and Trust Co.
424 Main Street
Buffalo, N. Y. 14202

Date: October 11, 1965

Name: Liberty National Bank and Trust Company
Address: 424 Main Street
Buffalo, N. Y. 14202

Refer to: REGISTRATION #556004

NOTICE OF DETERMINATION

The Director of the Erie County Sales Tax, pursuant to Section 7 of the Resolution of the Board of Supervisors of the County of Erie, imposing a Retail Sales Tax, adopted by the Board of Supervisors on the 27th day of May, 1947, pursuant to Chapter 278 of the Laws of 1947, as amended hereby gives notice of the determination of the Sales Tax Deficiency in the sum of $1807.18 plus interest $245.47 and penalty in the sum of $ - - - making a total due of $2052.65 for the period set forth below. The Director further gives notice that if any part of said deficiency is determined to include transaction not subject to tax under the Sales Tax imposed by said Resolution then such part of such deficiency is hereby determined to arise under the Compensating Use Tax imposed under the Resolution of the Board of Super-

visors adopted May 27, 1947, pursuant to Chapter 278 of the Laws of 1947, as amended.

SUMMARY OF DEFICIENCY

Period	Tax	Interest	Penalty	Total
June 30, 1962	$ 306.40	$ 61.28	—	$ 367.68
September 30, 1962	212.61	39.33	—	251.94
December 31, 1962	191.41	32.54	—	223.95
March 31, 1963	43.88	6.80	—	50.68
June 30, 1963	259.35	36.31	—	295.66
September 30, 1963	163.52	20.44	—	183.96
December 31, 1963	90.28	9.93	—	100.21
March 31, 1964	61.59	5.85	—	67.44
June 30, 1964	90.33	7.23	—	97.56
September 30, 1964	304.65	19.80	—	324.45
December 31, 1964	77.16	3.86	—	81.02
March 31, 1965	6.00	2.10	—	8.10
Amended Sales Tax and Compensating Use Tax				
Totals Due	$1,807.18	$245.47	—	$2,052.65

Additional penalties and/or interest will accrue in accordance with the provisions of said Resolution unless payment is received within ten (10) days. Please make your remittance to the office of the Director of Erie County Sales Tax, 907 City Hall, Buffalo, New York. In order to obtain proper credit for Payment, enclose a copy of this notice.

In the event that you do not agree with this determination, the law provides that written application for a hearing must be made to the Director within *thirty (30) days* of the date of this notice. Otherwise, this determination shall finally and irrevocably fix the tax. *In the event such hearing is* requested by an agent or representative of the taxpayer, the request must be accompanied by a properly executed *Power of Attorney* unless such Power of Attorney had previously been filed with this Department. If a Power of Attorney had previously been filed, such fact shall be stated in the request for hearing.

WILLIAM K. BUSCAGLIA
Director of Sales Tax

By William A. Fuhr
Deputy Director

Exhibit D-2

DIVISION OF SALES TAX

(SEAL)

COUNTY OF ERIE
907 City Hall
Buffalo, New York 14202
Telephone 852-5110

WILLIAM K. BUSCAGLIA
DIRECTOR

WILLIAM A. FUHR
DEPUTY DIRECTOR

JOHN S. RYAN
COUNSEL

October 21, 1965

Jaeckle, Fleischmann, Kelly, Swart & Augspurger
Attorneys at Law
Liberty Bank Building
Buffalo, New York 14202

Attention: Mr. William D. Schulz

Re: Liberty National Bank & Trust Company
Registration No. 556004

Gentlemen:

Receipt is acknowledged of your letter of October 18, 1965, addressed to the attention of Mr. William K. Buscaglia, Director of Erie County Sales Tax. I bring to your attention the Notice of Determination, dated October 11, 1965, is made up of Sales and Use tax on three different bases, for the period from April 1, 1962 to March 31, 1965.

The sum of $729.11 Use Tax was picked up on purchases previous to the Liberty Bank becoming a National Bank and should have been paid and the interest on this amount is $135.52, making a total Use Tax plus interest of $864.63.

This tax is not in question and should be paid before November 1, 1965. Additional tax was, also, picked up from April 1, 1962 to March 31, 1965 on the sale of repossessed tangible personal property, such as automobiles, which was or should have been collected from the purchaser and which is not a disputed item as far as our action is concerned. This tax amounts to $118.99 with interest of $10.58, making a total of $129.57. This, also, should be paid by November 1, 1965. This makes a total tax, which is not the subject of our law suit, of $994.20.

The balance of the Assessment is additional tax on purchases since the Bank became a National Bank on April 19, 1963. This tax amounts to $959.08 with interest of $97.48, making a total of $1,056.56. This is the same type of tax that is challenged under Article 78 proceedings and should be paid "under protest" to stop the running of interest from October 21, 1965, at the rate of 1% per month. If this tax is paid "under protest" by November 1, 1965, we will be able to accept same without any additional interest. In the event, that the Court should finally determine that your Bank is exempt, you will be entitled to a refund of this latter tax.

If it is paid "under protest", we do not need a stipulation, however, we are willing to stipulate to your rights, but this seems unnecessary.

I would appreciate receiving an additional copy of your Notice of Petition. This has been requested by the State Tax Commission, will you kindly send me one.

Yours very truly

WILLIAM K. BUSCAGLIA,
Director of Sales Tax,

BY: JOHN S. RYAN,
Counsel.

JSR/hak

Exhibit D-3

Form 542 Rev. 5-63

LIBERTY NATIONAL BANK AND TRUST COMPANY

October 26, 1965

Mr. William K. Buscaglia
Director of Erie County Sales Tax
907 City Hall
Buffalo, New York 14202

Dear Mr. Buscaglia:

I am enclosing Cashiers Check No. 171264 for $2,050.76 in full payment of the amount determined by you to be a deficiency in the retail sales and use tax payments by this bank for the period from June 30, 1962 through March 31, 1965, as set forth in your notice of determination dated October 11, 1965. In his letter of October 21, 1965, John S. Ryan, counsel to the Division of Sales Tax, advised us that of the total amount of this deficiency only $959.08 plus interest is involved in the pending Article 78 proceeding. Of the balance of the deficiency, he stated that $729.11 plus interest represents unpaid taxes for the period prior to April 19, 1963 the date when this bank became a national banking association, and $118.99 plus interest represents taxes due from the sale of repossessed tangible personal property.

Please be advised that payment of the entire amount is made under protest.

As you know, your determination of this deficiency is based upon the recent audit conducted by your division. We are unable to confirm this deficiency from our records and would appreciate a conference with your auditor. Mr.

Ryan has advised us that he is agreeable to this and we will contact your office to arrange a mutually convenient time.

We wish to clarify the fact that the request for a hearing on behalf of this bank dated October 18, 1965, includes the total amount of this deficiency and is not limited merely to the amount involved in the Article 78 proceeding.

Thank you for your cooperation in this matter.

Very truly yours,

J. G. SCHMAUSS.

Exhibit E

telephone 854-4520 *main office: 424 Main Street*

LIBERTY NATIONAL BANK AND TRUST COMPANY
BUFFALO, NEW YORK 14240

April 7, 1965

Mr. William K. Buscaglia, Director
Division of Sales Tax
907 City Hall
Buffalo, New York 14202

Dear Mr. Buscaglia:

The Liberty National Bank and Trust Company was converted from a New York State chartered commercial bank to a national banking association on April 19, 1963. Since that date and until December 31, 1964, Liberty National Bank and Trust Company has paid Erie County retail sales tax to vendors on account of the purchase or use of personal property by it. Since January 1, 1965,

Liberty National Bank and Trust Company has not paid Erie County retail sales tax to vendors on account of the purchase or use of personal property by it, but has instead reported its purchases or use directly and paid tax under protest. Attached to this letter is a schedule of Erie County retail sales tax payments made by Liberty National Bank and Trust Company from April 19, 1963 to December 31, 1964.

As a national bank, The Liberty National Bank and Trust Company is a federal instrumentality which, under the provisions of the United States Constitution, is immune from taxation by any State government or subdivision thereof, except as specifically provided by the United States Congress. 12 U. S. C., Section 548, is the only Federal Statute permitting State taxation of national banks. The Erie County retail sales tax is not a tax permitted by Section 548. Demand is therefore made pursuant to Section 10 of the Erie County Sales Tax Act, that all Erie County retail sales taxes paid by or on behalf of the Liberty National Bank and Trust Company from April 19, 1963 to the date of this letter be forthwith refunded.

Very truly yours,

J. G. SCHMAUSS
J. G. SCHMAUSS
Senior Vice President and Cashier

sn

Exhibit F

COUNTY OF ERIE
Division of

SALES TAX

WILLIAM K. BUSCAGLIA
DIRECTOR

WILLIAM A. FUHR
DEPUTY DIRECTOR

JOHN S. RYAN
COUNSEL

August 6, 1965

Liberty National Bank and Trust Company #556004
Buffalo, New York 14240

Attention: Mr. J. G. Schmauss,
Senior Vice President and Cashier

Gentlemen:

After an examination of your Application of April 7, 1965, asking for a refund of State Tax paid to vendors on the purchase or use of tangible personal property since your bank became a national bank on April 19, 1963, I regret to inform you that we must deny this application for a refund.

An examination of your records discloses that your bank is indebted to our Division in the amount of $1807.18, plus interest at the rate of 6% per annum from the due date of the various amounts.

This sum is made up as follows:

The sum of $118.99 is due on the sale of repossessed automobiles.

The sum of $729.11 is due on purchases made by your bank from April 1, 1962 to April 19, 1963.

The sum of $959.08 is due on purchases made from April 19, 1963 to March 31, 1964.

Yours very truly

DIVISION OF SALES TAX

WILLIAM K. BUSCAGLIA
Director of Sales Tax

WKB:GLS

CC: Jaeckle, Fleischmann, Kelly, Swart & Augspurger,
Attorneys at Law
Liberty Bank Building
Buffalo, New York 14202
Attention: Mr. Alan H. Vogt, Esquire

Exhibit G

THE TRAVELERS INDEMNITY COMPANY
Hartford, Connecticut

(A STOCK COMPANY)

BOND NO. 1222480

STATE OF NEW YORK
SUPREME COURT—ERIE COUNTY
SECURITY FOR COSTS

LIBERTY NATIONAL BANK AND TRUST COMPANY,
422 Main Street, Buffalo, New York,
Petitioner,

vs.

WILLIAM K. BUSCAGLIA, Director Division of Sales Tax—County of Erie,
Respondent.

WHEREIN, the above-named PETITIONER, LIBERTY NATIONAL BANK AND TRUST COMPANY, has commenced an action in the above-named Court, against the above-named RESPONDENT and the said RESPONDENT being entitled to security for costs as required by Section 10 (Subdivision B) of the Resolution of the Board of Supervisors of Erie County adopted June 2, 1964.

NOW, THEREFORE, THE TRAVELERS INDEMNITY COMPANY, a Corporation of the State of Connecticut, lawfully doing business in the State of New York and having an office and place of business at 737 Delaware Avenue, Buffalo, New York, does hereby undertake that it will pay on demand to the RESPONDENT, all costs which

may be awarded to the RESPONDENT, in the above-entitled action, not exceeding the sum of ONE THOUSAND AND NO/100 ($1,000.00) DOLLARS.

DATED: October 11, 1965.

THE TRAVELERS INDEMNITY COMPANY

BY: C. H. SCHRODER,
C. H. Schroder, *Attorney-in-Fact*

THE TRAVELERS INDEMNITY COMPANY
Hartford, Connecticut

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That THE TRAVELERS INDEMNITY COMPANY, a corporation of the State of Connecticut, does hereby make, constitute and appoint

——John T. Camp, Sarah M. Cicero, J. Paul Dowd, David E. Jones, C. H. Schroder, W. J. Sturdevant, all of Buffalo, New York, EACH————

its true and lawful Attorneys-in-Fact, with full power and authority, for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto, if a seal is required, bonds, undertakings, recognizances or other written obligations in the nature thereof, as follows: Any and all bonds, undertakings, recognizances, consents of surety or other written obligations in the nature thereof and to bind THE TRAVELERS INDEMNITY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This appointment is made under and by authority of the following by-laws of the Company which by-laws are now in full force and effect:

ARTICLE IV, SECTION 10. The President, the Chairman of the Finance Committee, the Chairman of the Insurance Executive Committee, any Vice President, any Second Vice President, any Secretary or any Department Secretary may appoint attorneys-in-fact or agents with full power and authority, as defined or limited in their respective powers of attorney, for and on behalf of the Company to execute and deliver, and affix the seal of the Company thereto, bonds, undertakings, recognizances, consents of surety or other written obligations in the nature thereof and any of said officers may remove any such attorney-in-fact or agent and revoke the power and authority given to him.

ARTICLE IV, SECTION 12. Any bond, undertaking, recognizance, consent of surety or written obligation in the nature thereof shall be valid and binding upon the Company when signed by the President, the Chairman of the Finance Committee, the Chairman of the Insurance Executive Committee, any Vice President or any Second Vice President and duly attested and sealed, if a seal is required, by any Secretary or any Department Secretary or any Assistant Secretary or when signed by the President, the Chairman of the Finance Committee, the Chairman of the Insurance Executive Committee, any Vice President, or any Second Vice President and countersigned and sealed, if a seal is required, by a duly authorized attorney-in-fact or agent; and any such bond, undertaking, recognizance, consent of surety or written obligation in the nature thereof shall be valid and binding upon the

Company when duly executed and sealed, if a seal is required, by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority granted by his or their power or powers of attorney.

This power of attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Directors of THE TRAVELERS INDEMNITY COMPANY at a meeting duly called and held on the 30th day of November, 1959:

VOTED: That the signature of any officer authorized by the By-Laws and the Company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognizance or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, THE TRAVELERS INDEMNITY COMPANY has caused these presents to be signed by its proper officer and its corporate seal to be hereunto affixed this 3rd day of May 1965.

THE TRAVELERS INDEMNITY COMPANY

By R. W. KAMMANN

(SEAL) *Secretary, Fidelity and Surety*

State of Connecticut, }
County of Hartford. } ss.:

On this 3rd day of May in the year 1965 before me personally came R. W. Kammann to me known, who, being by me duly sworn, did depose and say: that he resides in the State of Connecticut; that he is Secretary (Fidelity and Surety) of THE TRAVELERS INDEMNITY COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of his office under the by-laws of said corporation, and that he signed his name thereto by like authority.

MARGARET D. TUTTLE
(SEAL) *Notary Public*
My Commission expires April 1, 1969

CERTIFICATION

I, W. A. Person, Assistant Secretary (Fidelity and Surety) of THE TRAVELERS INDEMNITY COMPANY certify that the foregoing power of attorney, the above quoted Sections 10 and 12 of Article IV of the By-Laws and the Resolution of the Board of Directors of November 30, 1959 have not been abridged or revoked and are now in full force and effect.

Signed and Sealed at Hartford, Connecticut, this 11th day of October 1965.

W. A. PERSON
(SEAL) *Assistant Secretary, Fidelity and Surety*

State of New York,
County of Erie. } ss.:

On this 11th day of October, 1965, before me personally came C. H. Schroder to me known, who, being by me duly sworn, did depose and say: that he resides in Buffalo, Erie County, New York; that he is Attorney-in-Fact of THE TRAVELERS INDEMNITY COMPANY, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said company; that the seal affixed to said instrument is such corporate seal of said company; that it was so affixed by the authority granted to him in accordance with the by-laws of said corporation; that he signed his name thereto by like authority; that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 882 of the Laws of the State of New York for the year 1939 constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law, issued to THE TRAVELERS INDEMNITY COMPANY his certificate that said Company is qualified to become surety or guarantor on all bonds, undertakings, recognizances, guarantees and other obligations required or permitted by law; and that such certificate has not been revoked.

SOPHIA C. PUTAS
Notary Public—State of New York
Qualified in Erie County
My Commission Expires March 30, 1966

THE TRAVELERS INDEMNITY COMPANY
Hartford, Connecticut

FINANCIAL STATEMENT DECEMBER 31, 1964

Assets

Cash on hand and in banks	$ 9,678,809.87
Premiums in course of collection	129,666,225.97
United States Government securities	130,200,751.33
Other public bonds	555,294,285.00
	$824,840,072.17
All other bonds	$ 1,247,867.00
Stocks—Preferred	30,790,490.00
Common	62,307,110.00
Interest accrued and other assets	27,391,907.85
*TOTAL	$946,577,447.02

Liabilities, Surplus and Other Funds

Losses and loss adjustment expenses	$340,427,410.85
Unearned premiums	353,615,259.65
Reserves for taxes	9,507,465.40
Other reserves and liabilities	17,656,354.61
TOTAL LIABILITIES, EXCEPT CAPITAL	$721,206,490.51
Special surplus funds	$ 23,207,063.71
Capital	10,000,000.00
Unassigned funds—surplus	192,163,892.80
TOTAL	$946,577,447.02

*Assets include $20,545,493.00 in securities deposited with State and other authorities, as required by law.

The foregoing is a correct statement of the assets and liabilities of The Travelers Indemnity Company as of December 31, 1964.

I, W. A. Person, Assistant Secretary (Fidelity and Surety) of THE TRAVELERS INDEMNITY COMPANY, certify that the foregoing is a true and correct statement of the financial condition of the Company as of December 31, 1964.

W. A. PERSON
(SEAL) *Assistant Secretary, Fidelity and Surety*

APPENDIX B

New York Civil Practice Law and Rules, Rule 3222

R 3222. Action on submitted facts.

(a) Commencement. An action, except a matrimonial action, may be commenced by filing with the clerk a submission of the controversy, acknowledged by all parties in the form required to entitle a deed to be recorded. The submission shall consist of a case, containing a statement of the facts upon which the controversy depends, and a statement that the controversy is real and that the submission is made in good faith for the purpose of determining the rights of the parties. If made to the supreme court, the submission shall specify the particular county clerk with whom the papers are to be filed.

(b) Subsequent proceedings. Subsequent proceedings shall be had according to the civil practice law and rules except that:

1. an order of arrest or attachment or a preliminary injunction shall not be granted;

2. the controversy shall be determnied on the case alone;

3. if the submission is made to the supreme court, it shall be heard and determined either by the appellate division, or by special term, or, with his consent, by a specified judge or referee, as the parties may stipulate;

4. on such a submission the court, judge or referee may find facts by inference from the facts stipulated; and

5. if the statement of facts in the case is not sufficient to enable the court to enter judgment the submission shall be dismissed or the court shall allow the filing of an additional statement.